IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.17558 M OF 2005

DATE OF DECISION: APRIL 23, 2007

Siddharth Shriram

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. R. S. Cheema, Sr.Advocate with
Mr. K. S. Nalwa, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab.

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RANJIT SINGH, J.

Prayer made in the present petition is for quashing of complaint dated 22.12.1999 titled as State Vs. Sushil Kumar and others under Sections 7/16 of the Prevention of Food Adulteration Act, 1954. This case is pending before the Court of Additional Chief Judicial Magistrate, Ferozepur, who has summoned the petitioner under Section 7(1) read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for short, “the Act”).

The petitioner, who is a Managing Director of M/s Siel Limited (hereinafter referred to as “the Company”), which is in the business of marketing vanaspati and edible oils, has filed the present petition. The Company is having depot at Bathinda from where it is selling vanaspati to various whole-sale

dealers at different places in Punjab, including Ferozepur. Claiming that the petitioner, being a Managing Director, is not concerned with the day to-day business of the Company, could not have been summoned, especially so when the Company had nominated one Sh.R.K.Aggarwal as its nominee in the State of Punjab and has not been made as one of the accused.

Though in the petition, number of points are raised but Mr.R.S.Cheema, would only submit that the petitioner cannot be proceeded against as R.K.Aggarwal, Area Sales Manager has been duly nominated as Incharge and responsible to the Company for the conduct of business in entire State of Punjab in terms of Section 17 of the Act. The copy of the nomination dated 19.5.1997 is annexed with the petition as Annexure P-1. After referring to Section 17(2) of the Act, the counsel would say that Company was well within its rights to nominate a person, who alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. He would accordingly say that when R.K.Aggarwal is nominated as an Incharge and responsible to the Company for the conduct of business in the entire State of Punjab, the summoning order against the petitioner cannot be held sustainable.

Section 17 of the Act legislates a provision for making a nominated person being Incharge and responsible to the Company for being proceeded against. Section 17 (2) would provide the manner in which Company may nominate such a person. The same reads:-

17. ***Offences by companies.- (1) xx xx xx xx xx***

(2) Any company may, by order in writing, authorise any

> of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated."

The provisions reproduced above would show that the Company is to authorise a person in writing and is required to give a notice to the "L**ocal (Health) Authority**" in such form and in such manner as may be prescribed. The manner prescribed in this regard is given in Rule 12B of the Prevention of Food Adulteration Rules, 1955. An intimation of the nomination of R.K.Aggarwal under Section 17(2) of the Act in the State of Punjab was to be sent to the L**ocal (Health) Authority** where the Company was operating. No such intimation concededly has been given to the L**ocal (Health) Authority** at Ferozepur. The cause for filing the present complaint is at Ferozepur. In order to get full benefit of provisions of Section 17(2) of the Act, the Company was required to furnish intimation about nomination of R.K.Aggarwal to the L**ocal (Health) Authority**, which in this context would be L**ocal (Health) Authority at Ferozepur.** Accordingly, intimation and nomination, Annexure P-1, would not save the petitioner from prosecution on the ground that R.K.Aggarwal

was nominated for the State of Punjab.

Mr.Cheema would attempt to seek support from ***State (Delhi Admn.) Vs. I.K.Nangia and another,*** (1980) 1 Supreme Court Cases 258 by referring to Para 13 thereof. This was a case where one Y.A.Khan, Quality Control Manager of Ahmed Mills was nominated as a person responsible under Section 17(2) of the Act. It was accordingly submitted in this case that he alone would be person responsible to be proceeded against throughout the country and the prosecution of the respondents therein was wholly misconceived. Referring to the nomination, the Hon'ble Supreme Court held that "there is nothing in the document to show that the nomination is effective not only for the registered office of the company at Bombay but also for all its branches in different States". Such a construction would, as held by Hon'ble Supreme Court, would render the Explanation to Section 17(2) wholly illusory. Mr.Cheema seems to be urging that the nomination is for a whole State and it would cover Ferozepur as well. Since the provisions of the Act requires that L**ocal (Health) Authority** is to be put to notice in this regard, authorisation itself would not be that important in the absence of notice to L**ocal (Health) Authority.** Even if R.K.Aggarwal is nominated for the entire State of Punjab, then also Section 17(2) would require that notice in this regard be given to all the L**ocal (Health) Authorities** where the Company was carrying on its business including Ferozepur. This would be more so when it is viewed in the background of explanation under Section 17(2) of the Act, which clearly provides that where Company has different

establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit. If R.K.Aggarwal, Area Sales Manager, was made responsible for establishment at Ferozepur, the notice of the same was required to be given to the Local Health Authority at Ferozepur. Concededly, this was not done. In this background, neither the ratio laid down in the judgment noticed above would apply to the facts of this case nor the submissions made by counsel for the petitioner would make out a case for any interference for quashing this complaint on the ground as pleaded.

There is no merit in the submission made. The petition is accordingly dismissed.

April 23, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**